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CENTRAL DISTRICT OF CALIFORNIA
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CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re

ALFRED NAVARRO

Debtor.

ALFRED NAVARRO,

Plaintiff,
v.

UNIVERSITY OF REDLANDS

Defendant.

Case no. RS 97-19210 MJ

Adv. No. RS 02-1151 MJ

Chapter 7

MEMORANDUM OF DECISION
RE: DISCHARGEABILITY OF
STUDENT TUITION ACCOUNT

Hearing:

Date: September 5, 2002

Time: 10:00 a.m.

Ctrm: 302

Chapter 7 debtor, Albert Navarro ("Navarro") brought an adversary proceeding against The University of Redlands ("University"), seeking a determination that the debt he owed to University for unpaid tuition was discharged in his Chapter 7 case. On September 5, 2002, this matter came on for trial to determine the dischargeability pursuant to 11 U.S.C. § 523(a)(8) of the debt incurred by Navarro for unpaid tuition to the University, the Honorable Meredith A. Jury presiding. Todd Turoci of The Turoci Firm appeared on behalf of Navarro, and Gary L. Kaplan,

1 of the Law Offices of Gary L. Kaplan, appeared on behalf of the University. The Court, after
2 considering the arguments presented in open court, as well as supplemental exhibits tendered by
3 the University, submitted the matter for decision.

4 After due consideration, this court rules that the debt was dischargeable based on the
5 language in the documents presented. The exhibits presented only addressed fees and tuition as
6 being the sole responsibility of the student for prompt payment, to be paid when they became
7 due, and set forth a consequence if not paid. They did not create a "loan" within the meaning of
8 the discharge exception. Accordingly, the debt is discharged.

10 I. JURISDICTION AND PROCEDURE

11 The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a
12 core proceeding under 28 U.S.C. § 157(b).

14 II. FACTS AND BACKGROUND

15 In lieu of testimony at trial, the parties stipulated to material undisputed facts and
16 exhibits. On May 2, 1994, Navarro registered for classes at the University, a California non-
17 profit institution. As part of his initial registration, he signed a Registration and Tuition
18 Agreement and a Refund Policy and Tuition Liability Schedule. Approximately one year later he
19 also signed a Deferred Payment Request. Per those documents, Navarro agreed to pay for classes
20 he attended at University. Navarro ceased attending the University in May, 1996, but owed
21 tuition in the amount of \$5,465.20.

22 The Parties stipulated that the money owed was not for a loan made, insured or
23 guaranteed by a governmental unit nor was the money for a loan made under any program funded
24 in whole or in part by a governmental unit. They also agreed that University did not pay any
25 money to or on behalf of Navarro, nor did Navarro receive an educational stipend or scholarship

1 from the University.

2 On December 12, 1996, University filed suit against Navarro in the Municipal Court of
3 San Bernardino, Central Judicial District, to collect on the unpaid tuition debt ("State Court
4 Action"). On May 22, 1997, Navarro filed for Chapter 7 bankruptcy protection. The University
5 was scheduled as an unsecured creditor and received notice of the bankruptcy filing.

6 On September 4, 1997, Navarro received his discharge and the case was subsequently
7 closed. On October 10, 1997, the University took a default judgment in the State Court Action
8 against Navarro in the amount of \$6,786.72 (including interest, court costs and attorneys' fees).
9 The judgment was recorded, and in September, 2001, an Earnings Withholding Order was issued
10 and served on Navarro's employer. By stipulation, this order was stayed. The parties agree that if
11 the debt is not exempt from discharge under § 523(a)(8), then it was discharged in his bankruptcy
12 case and the judgment has no force and effect.

13 On March 26, 2002, Navarro moved to reopen his bankruptcy case to commence this
14 Adversary Proceeding against the University to determine the dischargeability of the debt owed
15 to the University.

16 17 III. DISCUSSION

18 A. *11 U.S.C. § 523(a)(8)*

19 The purpose of 11 U.S.C. §523(a)(8) is to exclude from the discharge normally granted to
20 debtors certain debts arising from educational loans. Section 523(a)(8) provides in relevant part
21 that:

22 (a) a discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this
23 title does not discharge an individual debtor from any debt ---

24
25 (8) for an educational benefit overpayment or loan made, insured or
26

guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend.

11 U.S.C. § 523(a)(8).

Congress enacted § 523(a)(8) because there was evidence of increasing abuse of the bankruptcy process, threatening the viability of educational loan programs and harm to future students as well as taxpayers. Congress recognized that this is an instance where a creditor's interest in receiving full payment of the debt outweighs the debtor's interest in a fresh start. In re Renshaw, 222 F3d 82 (2nd Cir. 2000); In re Johnson, 218 B.R. 449, 451-455 (8th Cir. BAP 1998); In re Merchant, 958 F.2d 738 (6th Cir. 1992).

B. *The Documents Executed by Navarro*

Through the two documents executed by Navarro in 1994, the Registration and Tuition Agreement (“Agreement”), and the Refund Policy/Tuition Liability and Refund Schedule (“Refund/Liability Schedule”), along with the Deferred Payment Request (“Deferred Payment Request”) executed in 1995, Navarro admits he agreed he would be liable for tuition incurred. However, he asserts he did not agree to repay a sum certain, in the future, as required for a loan.

The Agreement required basic personal information and directed students to mark the program in which they were enrolling. The Agreement stated that tuition was set at \$318.00 per credit hour and that “[f]ees and tuition are due at the beginning of each semester, and the student is solely responsible for prompt payment.” It further stated that “I have read and understood the above and agree to make tuition and fee payments as they come due.” It also informed the student that the University reserved the right to withhold services from or dismiss any student whose account became delinquent. Navarro signed the Agreement on May 2, 1994.

1 The Refund/Liability Schedule provided Navarro with information regarding the
2 University's tuition refund schedule and outlined his tuition liabilities if he were to commence
3 classes at the University but not finish them in any given semester. Navarro signed this
4 document on May 2, 1994.

5 On April 25, 1995, Navarro executed a Deferred Payment Request, which required basic
6 information and contained a section in which Navarro checked off the program wherein he was
7 requesting paid educational benefits of tuition/fees. The pertinent language of the Deferred
8 Payment Request included, "I understand that I am solely liable for payment of all tuition and
9 fees regardless of any educational benefits to which I may be entitled" and "I understand that if
10 payment in full is not made within 45 days of the end of each course, the University of Redlands:
11 (1) will not allow me to attend or enroll in subsequent classes until full payment has been made;
12 and (2) will not release a diploma or an official transcript until payment in full has been made."
13

14 C. *Definition of a Loan*

15 Case law in this area is diverse. All cases agree that "loan" is not defined in the
16 Bankruptcy Code or Rules as it relates to § 523(a)(8). Thus the term is interpreted according to
17 its settled meaning under common law. In re Renshaw, 222 F.3d 82, 88 (2nd Cir. 2000). To
18 constitute a loan, there must be (1) a contract, whereby (2) one party transfers a defined quantity
19 of money, goods, or services, to another, and (3) the other party agrees to pay for the sum or
20 items transferred at a later date. This implies that the contract to transfer items in return for
21 payment later must be reached prior to or contemporaneous with the transfer. Where such is the
22 intent of the parties, the transaction will be considered a loan regardless of its form. Absent such
23 an agreement, failure to pay a bill when due does not create a loan. In re Renshaw, 222 F.3d 82,
24 88 (2nd Cir. 2000), citing NLRB v. Amax Coal Co., 453 U.S. 322, 329, 101 S.Ct. 2789, 69
25 L.Ed.2d 672 (1981); *see also* In re Merchant, 958 F.2d 738, 740-741 (6th Cir. 1992); In re
26

1 Johnson, 218 B.R. 449, 455 (8th Cir. BAP 1998); In re Johnson, 222 B.R. 783 (Bankr. E.D. Va.
2 1998); In re Grand Union Co., 219 F. 353 (2nd. Cir. 1914).

3 The University relies on the Agreement and the Deferred Payment Request as proof of a
4 loan made to Navarro.

5 Cases finding that nonpayment of tuition and/or fees can qualify as an educational loan
6 are roughly divided into two classes. In the first, funds necessarily need not change hands, see,
7 for example, In re Johnson, 218 B.R. 449, 455 (8th Cir. BAP 1998), in which Missouri Baptist
8 College extended credit to Johnson for tuition, books and other expenses. Johnson executed a
9 promissory note on August 28, 1989, with the balance due to be repaid in December, 1989. In
10 1996, Johnson filed for Chapter 13 protection. In 1997, the College filed a complaint to
11 determine the dischargeability of the debt. The bankruptcy court determined the debt to be
12 nondischargeable, and Johnson appealed. The bankruptcy court's decision was upheld by the 8th
13 Circuit Bankruptcy Appellate Panel. The BAP found that to create a loan, money need not
14 change hands, and that the intent of the parties must be considered. In Johnson, the intent of the
15 parties to create a loan was expressed by Johnson's executing the promissory note. By
16 permitting Johnson to attend classes without repayment, the College was "advancing" funds or
17 credits to Johnson's account. Johnson drew upon the advances through her class attendance. It
18 was immaterial that no money changed hands. Johnson, at 457. See also In re Joyner, 171 B.R.
19 762 (Bankr. E.D.Pa. 1994), in which the loan extended by a college so a student could pay for
20 campus housing and a meal plan was found to be an educational benefit and not dischargeable in
21 bankruptcy. In the instant case, the stipulated facts state that Navarro received no scholarship or
22 stipend from the University, nor did the University pay any money to or on behalf of Navarro.

23 In the second class of cases, there is an agreement between the college and the student
24 whereby the college extends credit to the student permitting him to attend classes without paying
25 tuition, in return for his agreement to pay tuition at a future date, as in a promissory note.

1 Renshaw, supra at 90.

2
3 *D. Agreement to make a Loan*

4 Generally, where there is no indication of a prior agreement or a promissory note, the
5 cases find no loan exists. In re Renshaw, supra, at 91; In re Nelson, 188 B.R. 32, 33 (Bankr.
6 D.S.D. 1995) (no educational loan where student attended without paying tuition and signed
7 “payment plan application and promissory note” after withdrawal); In re Alibatya, 178 B.R. 335,
8 339 (Bankr. E.D.N.Y. 1995) (no loan where student failed to pay housing rent under lease
9 agreement with university); In re Peller, 184 B.R. 663, 664, 668-669 (Bankr. D.N.J. 1994) (no
10 loan where student signed “Intent to Register” form and then attended classes without paying
11 tuition).

12 The University cites In re Oldham, 220 B.R. 607 (Bankr. N.D.Ill. 1998), for the
13 proposition that a debt incurred as part of an employer tuition reimbursement plan is a loan for
14 the purposes of § 523(a)(8), and nondischargeable. In Oldham, however, the debt was for a
15 definite sum, with interest as provided by a promissory note executed by the debtor. In signing
16 the note, the debtor promised to repay the sum in the future, if funds were not received from his
17 employer.

18 The University also cites In re Merchant, 958 F.2d 738 (6th Cir. 1992), in which the court
19 decided that credit extensions given by nonprofit institutions to students as evidenced by
20 promissory notes payable to the institutions constitute student loans for nondischargeability
21 purposes. Merchant, however, is distinguishable in that the student loans therein were expressed
22 by promissory notes, which set forth a sum certain. The student in Merchant took out loans with
23 a bank to finance her education. The loan provided the bank full recourse against Andrews
24 University if the student defaulted. In addition, Merchant received assistance for educational
25 expenses which were evidenced by promissory notes to Andrews University. After graduation,

1 Merchant defaulted on her obligations both to Andrews University and to the bank. The bank
2 sought recourse against Andrews University, and the University, pursuant to its agreement with
3 the bank, paid the bank, took assignment of the note, and became the sole student loan creditor to
4 Merchant.

5 Merchant then filed for Chapter 7 bankruptcy. In determining whether or not the funds
6 owed to Andrews University constituted a loan, the Sixth Circuit looked at the definition of a
7 loan, focusing on the same cases discussed above. The Court then added factors from In re Hill,
8 44 B.R. 645 (Bankr. D.Mass. 1984). Those factors included: (1) the student was aware of the
9 credit extension and acknowledged the money owed; (2) the amount owed was liquidated; and
10 (3) the extended credit was defined as "a sum of money due to a person." In Merchant, the
11 student signed forms evidencing the amount of her indebtedness before she registered for classes.
12 She agreed, prior to receiving the sums owed, to repay those sums after graduation. The credit
13 extensions were educational loans for educational expenses.

14 In this case, there were no promissory notes executed prior to or contemporaneous with
15 Navarro's enrollment. There were no agreements to repay in the future any credit extended at
16 the time of Navarro's enrollment. There also was no sum certain, only a statement of fees per
17 credit hour. For this reason, the facts of this case do not fit within Merchant.

18 In re Renshaw, 222 F.3d 82, 88 (2nd Cir. 2000), involved a case where a student did not
19 pay tuition when it came due. Upon enrollment, Renshaw signed a Reservation Agreement, in
20 which Cazenovia College was obligated to hold a place open for Renshaw, provided he paid the
21 amounts billed when due. The Agreement further required Renshaw to remit funds to the college
22 when he returned the signed Agreement, and to timely pay tuition, room and board for the 1992
23 summer session and the 1992-1993 academic year, including a "service charge" of 19.2% if
24 payments on the student account were not made by their due dates. Tuition was due by
25 September 1, 1992 for the fall semester and January 1, 1993 for the spring 1993 semester.

1 Although Renshaw failed to pay the amounts when due, Cazenovia allowed him to register, live
2 in college housing, eat in the cafeteria and attend classes for both the summer 1992 session and
3 the fall 1992 semester. Renshaw did not return for the spring 1993 semester. Cazenovia
4 obtained a default judgment against Renshaw and Renshaw filed for bankruptcy protection.
5 Cazenovia instituted an adversary proceeding, and the bankruptcy court found the debt
6 dischargeable. The Bankruptcy Appellate Panel for the Second Circuit affirmed the lower
7 court's decision, and the matter was appealed to the Second Circuit. Renshaw, at 89.

8 The 2nd Circuit combined the Renshaw appeal with a similar case, College of St. Rose v.
9 Regner. Regner is even more on point with this case. In Regner, a student who enrolled in the
10 College of St. Rose in 1991 regularly paid his tuition bills at the beginning of each semester with
11 student aid funds, until the fall 1993 semester when he did not pay in advance. Nevertheless, St.
12 Rose permitted him to attend that semester without fully prepaying his tuition. In April, 1994 St.
13 Rose sent Regner a letter asking him to contact the college's business office to discuss his past
14 due bills. Regner acknowledged his debt, and made some payments, but never fully paid the bill.
15 St. Rose obtained a default judgment against Regner, and Regner filed for bankruptcy protection.
16 The bankruptcy court granted Regner summary judgment, and the District Court affirmed. St.
17 Rose further appealed to the Second Circuit. Renshaw, at 90.

18 In their combined appeals, Cazenovia and St. Rose maintained that by allowing the
19 students to attend without paying tuition, the colleges extended an "educational loan" within the
20 meaning of § 523(a)(8). The students did not argue that their attendance was not educational.
21 Instead, they argued that the services or goods the colleges gave them did not constitute a loan
22 within the meaning of § 523(a)(8). Renshaw, at 88.

23 Similar to the case at bar, neither college required any agreement, prior to or
24 contemporaneous with, the students' attendance that the respective colleges would provide the
25 students with educational services and that the students would pay for them at a later date, such
26

1 as one might find in a promissory note. There were no agreements about future class attendance
2 or any extensions of credit. The Second Circuit affirmed the trial court and the BAP, finding that
3 the tuition arrangement between the universities and the debtor students were not loans to qualify
4 for nondischargeability under §523(a)(8).

5 This court finds the facts of Renshaw similar to the instant facts and the finding that no
6 loans existed persuasive.

7
8 *E. There Is No Loan Present*

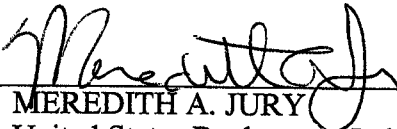
9 In this case, there were no agreements prior to or contemporaneous with Navarro's
10 enrollment indicating that the University would permit Navarro to attend classes and pay for the
11 tuition and other expenses at a later date. The Agreement and the Deferred Payment Request
12 merely stated that the student would be responsible for fees and tuition. The Agreement further
13 provided the hourly rate for tuition, and that the due date for tuition was the first day of each
14 semester. No liquidated sums were stated. Navarro made no promises that he would repay any
15 sums in the future. By signing the Agreement, Navarro acknowledged that he knew what the
16 hourly tuition fees were and that he understood he was responsible for prompt payment of tuition
17 and expenses by the due date. Further, the Deferred Payment Request was not even executed by
18 Navarro until well into his attendance at University. Although these documents indicate that
19 Navarro was liable for his tuition, no where in them did Navarro agreed to repay a sum certain in
20 the future. Therefore, the transaction does not constitute a loan within the meaning of 11 U.S.C.
21 § 523(a)(8).

22
23 IV. CONCLUSION

24 For the reasons stated, this Court holds that Navarro did not receive an educational loan
25 for the purposes of § 523(a)(8), and accordingly, his debt to the University of Redlands is

1 dischargeable in bankruptcy. This memorandum of decision shall constitute the court's findings
2 of fact and conclusions of law as allowed under F.R.B.P. 7052(a). Plaintiff shall prepare a
3 judgment in accordance with this ruling.

4
5 Dated: Oct 15, 2002


MEREDITH A. JURY
United States Bankruptcy Judge

The within order was mailed to the following parties in interest:

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